

ETNO Expert Contribution on the FCC notice of proposed rulemaking (NPRM) on ISP, ISR, Benchmark Policies and Mobile Termination Charges

(FCC 02-285 in the matter of International Settlements Policy Reform and International Settlement Rates)

Executive Summary

Our View: We welcome the main focus of the FCC's proceeding, which is looking to relax the rules governing bilateral negotiations between US operators and their counterparts to exchange traffic. However, we are concerned about the discussion of possible unilateral measures in relation to foreign mobile termination rates that would imply extra-territorial reach.

Our Arguments: The mobile market in Europe is extremely competitive and mobile termination rates – just like the rates for originating calls - have fallen over the past years. The regulatory authorities and the competition authorities of individual countries and of the EU are empowered and competent to address possible problems of market failure in the EU.

1. The European Telecommunications Network Operators' Association (ETNO) would like to take the opportunity to submit these initial comments to the above-mentioned initiative. ETNO is the principal Trade Association for European telecoms operators representing 41 companies, several of which are also present in the US market. The main objective of the Association is to encourage and contribute to a constructive dialogue with other actors involved in the development of the Information Society, for the benefit of users. ETNO thus contributes to the development of policies leading to an efficient and fair regulatory and trading environment for European telecommunications operators in Europe and abroad.
2. ETNO welcomes the main focus of the FCC's proceeding, which is looking to relax the rules governing bilateral negotiations between US operators and their counterparts to exchange traffic. But we are concerned about some aspects of the notice, which we explore further below. In this respect, ETNO certainly encourages the FCC to refrain from any unilateral measure

that would imply extra-territorial reach. Priority should be given to freely commercially negotiated arrangements, if needed supported by multilateral approaches. Furthermore, the regulatory authorities and the competition authorities of individual countries and of the EU are empowered and competent to address possible problems of market failure.

3. Taking into account the high level of competition achieved in the international markets¹ and the fact that accounting rates are being consistently lowered², ETNO considers that where competitive forces are present the ISP should be removed and all routes should be allowed to apply the ISR policy, regardless for example of the ownership structure of the terminating carrier.
4. Regarding foreign mobile termination rates, the FCC raises the question whether a “calling party pays” regime (CPP) in foreign market leads to artificially inflated international mobile termination charges and potentially encourages market abuse. ETNO would like to point out that the mobile market in Europe is extremely competitive and that mobile termination rates – just like the rates for originating calls - have fallen over the past years. While some countries in Europe have decided to let market forces put pressure on termination rates, others have adopted regulatory measures. It should be acknowledged that there is a difference in cost structures between mobile and fixed termination and it is appropriate to reflect them in international rates.
5. As price structures under the US "receiving party pays" (RPP) system and the European CPP system are different, rough comparisons made between absolute levels of mobile termination rates between US and overseas mobile carriers could often be misinterpreted. Under the RPP system termination prices represent only one part of the transport service, namely the fixed path. The second part, the mobile path, is paid by the receiving network. These money flows are recovered by billing the receiving mobile customer and through subscription prices. When assessing price levels one must take into account all costs involved.
6. As stated by the FCC itself³, the CPP model is used in most countries all over the world as a sound basis for the development of the mobile sector, based on CPP ability to allow higher penetration rates and diminish entrance barriers. This has been the case in all European countries, where mobile services have been efficiently developed in a competitive environment and reached the highest penetration rates.
7. In summary, the NPRM, while positive in some respects, leaves room for potential provisions implying extraterritorial impact and increasing regulatory intervention, especially in the mobile sector. ETNO asks the FCC to take these initial observations into consideration and will further contribute to this discussion as appropriate.

¹ See NPRM at ¶15: “As competition emerges in the U.S.-international marketplace, public interest harms to U.S. carriers and consumers become less probable, and the Commission is able to rely more upon market solutions and less upon regulatory requirements in some policy areas. Strong competition places downward pressures on international calling prices; stimulates technological innovation; prevents inefficiencies in markets; encourages better service quality and options; and mitigates potential anticompetitive behavior.”

See NPRM at ¶ 19: “Liberalization in foreign markets has also increased dramatically from the combined effects of market forces and the pro-competitive commitments made by foreign countries under the WTO.”

² See NPRM at ¶ 13: “The success of U.S. carriers in achieving lower settlement rates appears to be attributable to a combination of factors, including many beyond the Commission’s regulatory policies. Greater competition in foreign markets, as well as the development of least-cost routing mechanisms such as refile or re-origination, and the emergence of technological innovations have contributed to the decline in settlement rates.”

³ See NPRM at ¶ 45: “Under a “calling party pays” regulatory framework, mobile phone subscribers pay only for the outgoing calls they place to others. The “calling party” is responsible for the payment of calls placed to mobile phones. Many countries other than the United States have adopted this regulatory regime for payment flows on the basis that a “calling party pays” framework may make wireless services more affordable for lower income consumers who do not have to incur the cost of receiving calls and may encourage greater use of wireless services by removing the incentive to keep a mobile phone turned off to avoid paying for incoming calls.”